



# California Fair Political Practices Commission

April 29, 1988

Frederick K. Lowell  
Pillsbury, Madison & Sutro  
225 Bush Street  
Post Office Box 7880  
San Francisco, CA 94120

Re: Your Request for Informal  
Assistance  
Our File No. I-88-101

Dear Mr. Lowell:

You have requested advice concerning the lobbying disclosure provisions of the Political Reform Act (the "Act").<sup>1/</sup> Your letter does not identify the person on whose behalf you have requested advice. Accordingly, we treat your letter as a request for informal assistance pursuant to Regulation 18329(c).<sup>2/</sup>

As you requested, this letter confirms our previous telephone advice.

## QUESTION

For purposes of reporting activity expenses under the Act's lobbying provisions, are employees of the Legislative Data Center "legislative officials" or are they "agency officials"?

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c) (3).)

### CONCLUSION

For purposes of the Act, employees of the Legislative Data Center are "agency officials." Accordingly, a lobbying filer is not required to report any gifts or other activity expenses incurred for employees of the Legislative Data Center unless the filer has attempted or is attempting to influence administrative action of the Legislative Data Center or its parent agency, the Legislative Counsel Bureau.

### ANALYSIS

Under the Act, lobbyists, lobbying firms, lobbyist employers and persons who spend \$5,000 or more in a calendar quarter to influence legislative or administrative action ("\$5,000 filers") are required to file quarterly reports of their lobbying expenditures. These reports include the filer's "activity expenses." (Sections 86113(a)(1), 86114(a)(5), and 86116(f).) An "activity expense" is any expense incurred or payment made by the filer which benefits in whole or in part any elective state official, legislative official, agency official, state candidate, or a member of the immediate family of these individuals. (Section 86111(a).)

Your question is whether employees of the Legislative Data Center are considered "legislative officials" or "agency officials" for purposes of reporting activity expenses. In general, "legislative officials" are employees or consultants of the Legislature. (Section 82038.) "Agency officials" are members, officers, employees or consultants of state agencies. (Section 82004.)

A lobbyist, lobbying firm, lobbyist employer or \$5,000 filer must report all gifts and other payments it makes which benefit any legislative official. This is not so for agency officials. The filer reports gifts and other payments it makes which benefit agency officials only if the officials are employed by a state agency whose administrative actions the filer has attempted or is attempting to influence. (Section 86111(b).) Moreover, the term "agency official" is limited to persons who as part of their official duties participate in administrative action in other than a purely clerical, secretarial or ministerial capacity. (Section 82004.)

The Act provides no specific guidance as to whether employees of the Legislative Data Center, or its parent agency, the Legislative Counsel Bureau, are "legislative officials" or "agency officials." The primary duties of the Legislative Counsel Bureau are to assist the Legislature in preparation of bills, resolutions and measures and to provide legal counsel and related services to the members of the Legislature in that regard. (Sections 10207, 10230, 10231 and 10234.)

Under some provisions of state law, employees of the Legislative Counsel Bureau are treated differently from legislative employees. For example, employees of the Legislature and legislative committees are exempt from state civil service laws. (Cal. Const. Art. 7, Sec. 4(a).) In the Legislative Counsel Bureau, only the Legislative Counsel and two deputies or employees are exempt from state civil service laws. (Cal. Const. Art. 7, Sec. 4(a) and (m).) The remainder, like most employees of state agencies, are included in the state civil service. (Cal. Const. Art. 7, Sec. 1(a).)

Because employees of the Legislative Counsel Bureau are state civil service employees, we conclude that they are excluded from the definition of "legislative official." They are not employees of the Legislature. Furthermore, they are not consultants of the Legislature, as the Commission has defined that term for purposes of the Act. (Regulation 18700(a)(2); In re Morrissey (1976) 2 FPPC Ops. 120, copies enclosed.)

Thus, we conclude that employees of the Legislative Data Center and its parent agency, the Legislative Counsel Bureau, are "agency officials" for purposes of the Act. Accordingly, a lobbying filer is not required to report any gifts or other activity expenses incurred for employees of the Legislative Data Center unless the filer has attempted or is attempting to influence administrative action of the Legislative Counsel Bureau.

We note that regardless of whether employees of the Legislative Counsel Bureau are legislative officials or agency officials, those employees are "public officials" for purposes of the conflict-of-interest provisions of the Act. (Section 82048.) No public official may make, participate in, or use his or her official position to influence a governmental decision which would foreseeably and materially affect a source of gifts or income totalling \$250 or more in the preceding 12 months. Accordingly, activity expenses incurred by a lobbying filer for an employee of the Legislative Counsel Bureau could affect that employee's ability to participate in decisions concerning the filer. (See Kolodney Advice Letter, No. A-87-182, copy enclosed.)

In addition, the statement of incompatible activities for employees of the Legislative Counsel Bureau may further restrict the gifts those employees may accept from persons doing business with the agency. (See Section 19990(f).)

Mr. Lowell  
April 29, 1988  
Page 4

If you have any further questions regarding this matter,  
please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

*Kathryn E. Donovan*

By: Kathryn E. Donovan  
Counsel, Legal Division

DMG:KED:ld:88101

Enclosures

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March 9, 1988

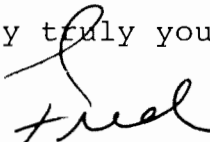
Ms. Kathy Donovan  
Fair Political Practices  
Commission  
P.O. Box 807  
Sacramento, CA 95805

Dear Kathy:

This constitutes a request for written advice  
pursuant to Government Code Section 83114(b).

We are requesting confirmation of the oral advice  
which was given to us by telephone to the effect that employees  
of the Legislative Data Center (the "LDC") are not "legislative  
officials" as defined under the Political Reform Act of 1974.  
Therefore, payments which benefit LDC employees or members  
of their immediate families are only "activity expenses" under  
Government Code Section 86111 if a lobbyist, lobbying firm,  
lobbyist employer or a \$5,000 filer making such payments has  
attempted or is attempting to influence the administrative  
actions of the LDC.

Very truly yours,



Frederick K. Lowell



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By: Kathryn E. Donovan  
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